



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

CRS  
Docket No: 4233-98  
2 April 1999

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments  
(2) Case Summary  
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the United States Marine Corps, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected by removing the nonjudicial punishment (NJP) awarded to him on 5 September 1996.

2. The Board, consisting of Mr. Cali, Mr. Mathews, and Ms. Madison, reviewed Petitioner's allegations of error and injustice on 9 February 1999 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner reenlisted in the Marine Corps on 9 November 1995 after more than three years of prior active service. Until the NJP at issue, he served during this enlistment without disciplinary incident.

d. The record reflects that on 5 September 1996 Petitioner received NJP for absence from his appointed place of duty on or about 0550 on 21 August 1996. The punishment imposed consisted of a forfeiture of \$250 per month for two months, reduction in rank from CPL (E-4) to LCPL (E-3), and extra duty and restriction

for 45 days.

e. On 10 March 1998 a physical evaluation board (PEB) diagnosed Petitioner as having idiopathic hypersomnia. The PEB recommended separation with ten percent severance pay.

f. An advisory opinion from the Staff Judge Advocate (SJA) to the Commandant of the Marine Corps, dated 19 January 1999, recommends that the NJP of 5 September 1996 be removed. In this regard, the SJA notes the finding of the PEB that Petitioner had difficulty waking up and was inordinately sleepy during normal working hours. The opinion further states that it appears that the misconduct was directly related to a recognized medical condition.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board concurs with the advisory opinion that the NJP of 5 September 1996 should be removed from the record.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

#### RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing all references to the NJP of 5 September 1996 including, but not necessarily limited to, any entry on the Offenses and Punishments page (page 12) of enclosure (3).

b. That Petitioner's naval record be further corrected to show that he was not reduced from CPL to LCPL on 5 September 1996.

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.


4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder



ALAN E. GOLDSMITH  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER  
Executive Director